

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

JST

Mailed: February 10, 2003

Opposition No. 91125615

University of Southern
California

v.

University of South
Carolina

Jyll S. Taylor, Attorney:

On June 6, 2002, the Board instituted these proceedings and allowed applicant time to file an answer to the notice of opposition. On August 5, 2002, applicant filed an answer and amended counterclaim. Inasmuch as there were no amendments in the answer and opposer had yet to file an answer to the counterclaim, it is accepted and made of record.¹ In lieu of an answer to the counterclaim, opposer filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6).

In support of its motion, opposer has submitted several exhibits. Because opposer has submitted matters outside the pleadings, and because the Board will consider the same in

¹ The Board notes that applicant's original answer has never been associated with the proceeding file. Applicant should file a copy thereof with the Board no later than thirty days from the mailing date of this order.

its decision, the motion will be treated as one for summary judgment under Fed. R. Civ. P. 56.²

Accordingly, applicant is allowed until **THIRTY DAYS** from the mailing date of this order to present any additional material made pertinent to such a motion by Fed. R. Civ. P. 56. *See Dunkin' Donuts of America Inc. v. Metallurgical Exoproducts Corp.*, 840 F.2d 917, 6 USPQ2d 1026 (Fed. Cir. 1988); *Selva & Sons, Inc. v. Nina Footwear, Inc.*, 705 F.2d 1316, 217 USPQ 641 (Fed. Cir. 1983). Opposer is allowed until **TWENTY DAYS** from the date of service of any such additional materials in which to file a supplemental reply brief, if so desired. If no additional briefs are filed within the time allowed, the Board will rule on the motion for summary judgment - as currently - briefed in due course.

Proceedings herein are otherwise suspended pending disposition of the motion for summary judgment. Any paper filed during the pendency of this motion that is not relevant thereto will be given no consideration. See Trademark Rule 2.127(d).

² It is noted that the parties have fully briefed the motion to dismiss and that opposer has filed a reply brief. The Board will consider the motion, response and reply in its decision, but it is apparent that applicant has treated the motion solely as one to dismiss .